IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.1031 OF 2005
WITH
CIVIL APPLICATION NO.1233 OF 2005

Ashok Patel & Anr. ...Appellants.
Vs.
The Municipal Corporation of Gr.Mumbai & Ors. ...Respondents.
....
Mr. V. B. Naik with Mr.Amit Karkhanis for the Appellant.
Mrs.Geeta Joglekar for Respondent No.1.
Mrs.Nita Madhyan for Respondent Nos.2,3 and 4.
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CORAM : DR. D.Y. CHANDRACHUD, J.

November 28, 2005.

P.C.:

Admit. By consent taken up for hearing and final disposal.

2. The Appellants are the owners of a residential flat being Flat No.1 in Cote D'azur, 65, Bhulabhai Desai Road, Mumbai. The Appellants applied to the Municipal Corporation for a change of user of the flat from residential to commercial and carried out additions and alterations. The Municipal Corporation issued an IOD under Section 346 of the Mumbai Municipal Corporation Act,

1888, on 6th March 2003. Condition 12 of the IOD requires that an NOC be obtained from all the residents/flat owners of the building for the proposed change of user and for additions and alterations that were sought to be carried out. Admittedly, the Appellants do not have NOC of all the six flat owners since three of the flat owners viz., Respondent Nos.2, 3 and 4 have objected. It appears from the photographs which are placed on the record of this Court that the appellants have demolished the internal walls in the premises without obtaining the permission of the Municipal Corporation and that this was done with a view to facilitate the conversion of the flat from residential to commercial user. The City Civil Court was moved by Respondent Nos.2, 3 and 4 who instituted a suit for injunctive relief. In the Notice of Motion that was taken out by the aforesaid Plaintiffs, the Appellants have been restrained from making any additions and alterations, until all the conditions of the IOD are fulfilled, including obtaining of an NOC of all the flat owners.

3. The Learned Trial Judge is, in my view, justified in injuncting the Appellants from carrying out additions and alterations without fulfilling the conditions of the IOD. The Appellants have not

challenged the conditions of the IOD. It is hence not open to the Appellants to take the law in their own hand for carrying out a change of user from residential to commercial and making additions and alterations for the aforesaid purpose. At the hearing of the appeal, Counsel appearing on behalf of the Appellants has submitted before the Court that the internal condition of the flat is poor and the flat is in a dilapidated condition. Counsel stated that the Appellants may be permitted to restore the condition of the flat to its original position in accordance with the sanctioned building plan. The Appellants will necessarily have to obtain the permission of the Municipal Corporation to do so since it is apparent that the Appellants have carried out additions and alterations including the demolition of internal walls without the permission of the Corporation. The Appellants, it has been stated, shall apply to the Municipal Corporation for the restoration of the condition of the flat in accordance with the sanctioned building plan and after such permission is received, will carry out the work of restoration. Upon the receipt of the permission, it has been submitted, the Appellants will also carry out such items of tenantable repairs that are permissible under the explanation to Section 342 of the Mumbai Municipal Corporation Act, 1888. The Appellants have also

submitted a representation to the Municipal Corporation on 26th March 2004 and it has been submitted that the Executive Engineer (Building Proposal), may be directed to dispose of the representation. On behalf of the Plaintiffs before the City Civil Court it has been submitted that the Appellants should not be permitted to carry out any alteration of the user at this stage from residential to commercial since that is not in accordance with law.

4. Having regard to the aforesaid submissions, the following order will meet the ends of justice:

-(1) The Appellants undertake through Counsel appearing on their behalf that they shall restore the position of residential Flat No.1 to a position that will accord with the sanctioned building plan and that for the aforesaid purpose, the Appellants shall apply to the Municipal Corporation for its permission without which no work shall be carried out;

-(2) Subject to the receipt of the permission from the Municipal Corporation as provided in clause (1) above, it would be open to the Appellants to carry out such work as is permitted by

the Corporation, including tenantable repairs as permissible under Section 342 of the Mumbai Municipal Corporation Act, 1888, all such repairs being relatable to the user of the flat for residential purposes only;

-(3) It would be open to the Appellants to pursue their representation dated 26th March 2004 submitted to the Executive Engineer (Building Proposals). The EEBP shall before taking a final decision thereon, give an opportunity of being heard to Respondent Nos.2, 3 and 4, the Original Plaintiffs before the City Civil Court;

-(4) The EEBP shall dispose of the representation within a period of six weeks and in the event that any permission is granted to the Appellants for a change of user that shall not be acted upon without the leave of the City Civil Court.

5. The appeal is accordingly disposed of.

6. In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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